Contract Law CHAPTER 12 Reality of Assent Page 258 CASE OPENER Disagreement Over an Agreement In spring 1989, Michael Jordan and the Chicago Bulls were in Indianapolis, Indiana, to play against the Indiana Pacers. At the same time, Karla Knafel was singing with a band at a hotel in Indianapolis. After Knafel's performance, a National Basketball Association referee approached her and introduced her to Jordan by telephone. Knafel and Jordan began a long-distance telephone relationship that continued for several months. In December 1989, Knafel traveled to Chicago to meet with Jordan, where the couple had unprotected sex for the first time. In November 1990, the couple had unprotected sex again while in Phoenix, Arizona. Shortly after this second meeting, Knafel learned that she was pregnant. Knafel was convinced that she was "carrying Jordan's baby" despite having had sex with other male partners. Later, during spring 1991, Knafel informed Jordan she was pregnant with his child. As a result of several conversations about the baby, Knafel alleged that the two had agreed that Jordan would pay her $5 million when he retired from professional basketball. In return, Knafel promised she would not file a paternity suit against him and would keep their relationship a secret. In July 1991, the baby was born. Jordan paid some hospital bills and medical costs, and he paid Knafel $250,000 for "her mental pain and anguish arising from her relationship with him." Knafel continued to keep the relationship and paternity a secret. In 2000, after Jordan retired from professional basketball, a lawsuit arose between the parties. Jordan sought declaratory judgment and an injunction against Knafel, who had been approaching him for the $5 million. Knafel filed a counterclaim for Jordan's alleged breach of contract. The trial court dismissed all claims, but the appellate court remanded Knafel's claim for breach of contract. Although Jordan had originally denied the existence of the agreement, on remand he did not contest the existence of the alleged settlement agreement. Instead, Jordan argued that the alleged agreement was not enforceable because it either was fraudulently induced or was based on a mutual mistake of fact. In support of his argument, Jordan produced the affidavit of Dr. Storm, who, after DNA testing, concluded that Jordan was not the child's father. In response to Jordan's argument, Knafel claimed that the paternity of the child was irrelevant to the enforceability of the alleged agreement. An obstetrician had told Knafel that the baby was conceived on November 19 or 20, 1990 (while she was in Phoenix with Jordan). As a result of this information, Knafel believed that the baby was Jordan's. Additionally, Knafel asserted that the paternity was irrelevant because Jordan entered into the agreement knowing that she had been having sex with other men. The trial court ruled in favor of Jordan, finding that "as a result of Knafel's

fraudulent misrepresentation to Jordan that he was the child's father or, alternatively, as a result of a mutual mistake of fact, the alleged settlement contract is voidable and is therefore unenforceable against Jordan." Knafel appealed. Imagine you are the judge in this case. Do you think that both parties were able to assent to the agreement legally? Under which ethical system, if any, should Knafel be able to recover the $5 million for breach of contract? Page 259 LEARNING OBJECTIVES LO 12-1 Describe the importance of legal assent. LO 12-2 Recall the elements of mistake. LO 12-3 Recall the elements of misrepresentation. LO 12-4 Recall the elements of undue influence. LO 12-5 Recall the elements of duress.

The Importance of Genuine Assent LO 12-1 Describe the importance of legal assent. When two people talk to each other in the hope that an exchange will take place, all kinds of things can go wrong. Global business needs dependability. Just imagine what it would be like if "Yes" meant "Maybe!" Deals would be closed only to be reopened again and again. The costs of all purchases would soar. Businesses would be forced to charge extra to pay for all the extra time they had to spend to finally get to the point when "Yes" really meant "Yes." To make business transactions smoother and more dependable, the law has developed rules about when "Yes" means "Yes." As Chapter 9 explained, you need an offer and an acceptance to form a contract. Sometimes, however, there is a problem with the acceptance. Certain problems with the acceptance, or the yes, may give rise to the claim that the acceptance was not really genuine and, therefore, that the resulting contract is not valid. In this chapter, we examine the problems that may arise with an acceptance that will make the resulting contract voidable. When a contract is voidable, it may be rescinded, or canceled. The cancellation of a contract permits the person who canceled it to require the return of everything they gave the other party. At the same time, the person who rescinds the contract must return whatever they have received from the other party. A major theme of this chapter is that good business managers aim for genuine assent in their contracts. This chapter shows you how to achieve genuine assent. It explains the major obstacles to genuine assent: mistake, misrepresentation, undue influence, and duress. Knowing about these potential problems will help you avoid them.

Mistake LO 12-2 Recall the elements of mistake. When people agree to buy or sell, they do so with a particular understanding about the nature of the

good or service they are about to exchange. However, one or both parties may think they consented to exchange a particular thing only to find out later that no meeting of the minds had occurred. People may misunderstand either some fact about the deal or the value of what is being exchanged. We focus on misunderstandings about facts because they are the only issues that raise the potential of rescission in American courts. Page 260 European courts take a different approach to mistakes about the value of performance of a contract. In general, they agree with the reluctance of American courts to interfere with a contract just because the value of the item in question has changed since the agreement. The parties are assumed to have accepted the risk, when they made the contract, that the value might change later. However, European courts permit rescission of the contract for a mistake of value when the mistake involves more than 50 percent of the value at the time of the contract. Legal assent is absent when a legal mistake occurs. The term mistake in contract law has a special meaning that deserves special attention because it is not quite the same as the ordinary use of the term. A mistake is an erroneous belief about the facts of a contract at the time the contract is concluded. There is one more important aspect of the definition of mistake. Later in this chapter, when we discuss misrepresentation, our focus will be on incorrect beliefs about the facts of the contract caused by the other party's untrue statements. Mistakes in contract law do not result from the untrue statements of the other party to the contract. Mistakes may be unilateral, the result of an error by one party about a material fact, that is, a fact that is important in the context of the particular contract. Alternatively, they may be mutual, shared by both parties to the agreement. This distinction is important in determining which contracts are voidable. Used by permission of Stu Rees, Stu's Views. Unilateral Mistake In general, a unilateral mistake does not void a contract. Courts are hesitant to interfere with a contract when one of the parties has a correct understanding of the material facts of the agreement. For instance, a widow seeking to rescind her and her husband's election to have his retirement benefits paid out over his life was not permitted to receive survivor's pension benefits. The court held that representatives of the retirement system had provided sufficient information to the plaintiff and her husband before they elected that particular form of payout.1 Page 261 Sometimes, however, rescission is permitted for even unilateral mistakes. Because our economic well-being depends so heavily on reliable contracts, we want to be fully aware of the circumstances under which unilateral mistakes permit rescission. Any of the following conditions would permit a court to invalidate a contract on grounds of unilateral mistake: One party made a mistake about a material fact and

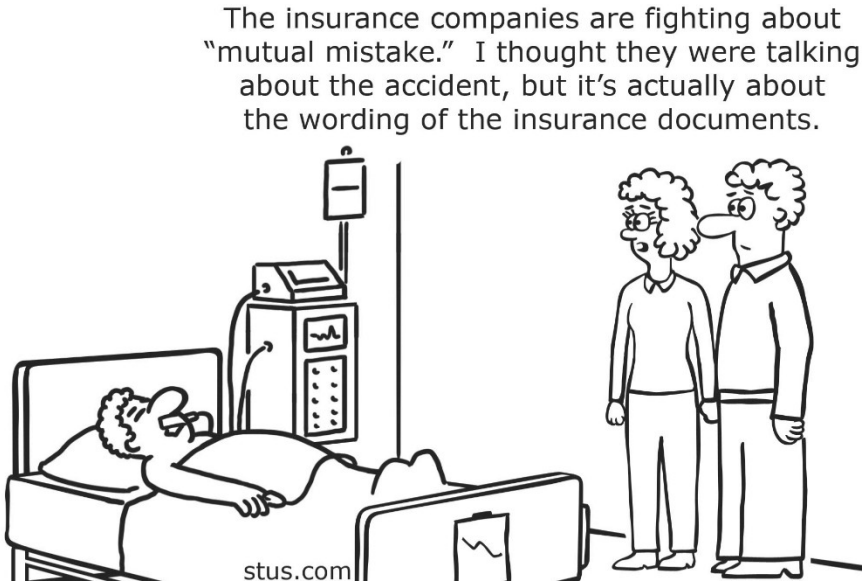
the other party either knew or had reason to know about the mistake. The mistake was caused by a clerical error that did not result from gross negligence. The mistake was so serious that the contract is unconscionable, that is, so unreasonable that it is outrageous. These situations are rare, but it is important to be aware of them because any rescission can be costly in terms of time and lost opportunities. Mutual Mistake When both parties to a contract are mistaken about either a current or a past material fact, either party can choose to rescind the contract. Rescinding such a contract is fair because any agreement between the parties was an illusion: An ambiguity in some key fact prevented the parties from being in actual agreement. The famous story of the ship Peerless2 has taught generations of students the importance of being very clear in defining material facts in any contract. The parties to the contract that led to the contract disagreement had agreed that the vessel Peerless would deliver the cotton they were exchanging. Unfortunately for them, there were two ships named Peerless. So when the deal was made, one party had one Peerless in mind while the other meant the second Peerless. The times the ships sailed were materially different, so the court rescinded the contract. CASE Nugget A Questionable Mistake Mary W. Scott (Respondent-Appellant) v. Mid-Carolina Homes, Inc. (Appellant-Respondent) Court of Appeals of South Carolina 293 S.C. 191 (1987) Mary Scott signed a contract to purchase a repossessed 1984 mobile home from Mid-Carolina Homes Inc. for $5,644, to be paid in full before delivery. She gave the salesperson a check for $2,913.71 and agreed to pay the balance before the end of the month. Within the next week, the salesman called and told her he could not sell her the home because it had a bent frame, and the South Carolina Manufactured Housing Board would not permit him to sell a home with a bent frame. She offered to buy it as-is and sign a waiver, but the salesman said that would not be legal. A few weeks later, Mid-Carolina sold the mobile home to another couple for $9,220. Scott sued and was awarded $3,600 actual damages and $6,400 punitive damages for breach of contract accompanied by a fraudulent act and $3,000 actual damages for violation of a state consumer protection law. The appeals court upheld the award. On appeal, Mid-Carolina argued that it was entitled to rescind the contract because the salesperson was acting under a mistake of fact when he gave Scott the sales price. In upholding the award, the state supreme court explained that a contract may be rescinded for unilateral mistake only when the mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to the rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances that would

make it a great wrong to enforce the agreement. Mid-Carolina had not demonstrated the presence of any of the circumstances that would justify a rescission. The salesperson was in the superior bargaining position to know the price, and the buyer’s reliance on a salesperson’s representation of the price was reasonable. Page 262 Warning: Anticipate ambiguity in the material facts and clarify them in advance to save yourself headaches later. For a mutual mistake to interfere with legal consent, it must involve all the following: A basic assumption about the subject matter of the contract. A material effect on the agreement. An adverse effect on a party that did not agree to bear the risk of mistake at the time of the agreement. Courts will not void contracts for reason of mutual mistake if even one of the preceding attributes is missing. For instance, to rise to the level of a basic assumption, the mistake would need to be about the existence, quality, or quantity of the items to be exchanged. To meet the second condition, the mistake must involve the essence of the agreement. A fact is material when it provides a basis for a person’s agreement to enter into the contract. In the case opener, Knafel was basing her appeal on the argument that the paternity of her baby was not material to Jordan’s decision to enter into the contract. Do you think she has a good argument? The second element is not satisfied when the person attempting to avoid the contract simply claims that the item to be exchanged is not the one they had intended to exchange. The third condition is necessary to protect those who bargain with someone who agreed, at the time of the agreement, to bear the risk of mistake but then later wants to avoid that risk when the contract does not work out as well as he or she had planned. This situation might arise, for instance, if the adversely affected party had agreed in the contract to accept the items as-is but later felt they were not worth the price paid. Sometimes, however, one party does not explicitly bear the risk of a mistake but rather does so implicitly by “conscious ignorance” of facts relevant to the alleged mutual mistake. This situation is illustrated in Case 12-1. CASE 12-1 JEROME M. EISENBERG, INC. v. HALL 147 A.D. 3d 602 (2017) FACTS: Jerome M. Eisenberg is an antiquities dealer and a self-proclaimed expert in classical antiquities with a doctorate in Roman, Egyptian, and Near Eastern art. Maurice E. Hall, Jr. is an art dealer that mainly deals in sixteenth to nineteenth century art. Hall asserts that his expertise is in Renaissance art and that he is merely an “amateur collector” of classical antiquities. In 2009, Eisenberg visited Hall’s townhouse, out of which Hall operated his business, and purchased two items: a mar-ble bust of Faustina II, purported to be ancient Roman, and a bronze warrior statue purported to be Etruscan or Roman era. A few months later, Eisenberg sold the bust to the Mougins Museum of Classical Art in France. In April 2011,

Eisenberg submitted the bronze statue to a lab in France for metallographic analysis. The lab determined that the statue was from the nineteenth or twentieth century, and there-fore not ancient. In September 2011, the Mougins Museum informed Eisenberg that the bust was a fake in that it was modern and not ancient. Eisenberg filed suit against Hall, claiming the contract should be voided due to mutual mis-take. The trial court ruled in favor of Hall, and Eisenburg appealed. ISSUE: Should the contract between Eisenburg and Hall be voided on summary judgment under the theory of mutual mistake? REASONING: Plaintiff alleges that due to the "mutual mistake" of the parties regarding whether the items were ancient, it is entitled to summary judgment. The court ultimately held that plaintiff is not entitled to summary judgment on its breach of contract claim pursuant to the doctrine of mutual mistake. Although the record reflects that both plaintiff and defendants mistakenly assumed at the time of the transactions that the items at issue were ancient, issues of fact exist as to whether plaintiff bore the risk of that mistake due to its "[c]onscious ignorance" of the items' authenticity. The court held that the doctrine of mutual mistake "may not be invoked by a party to avoid the consequences of its own negligence." Where a party "in the exercise of ordinary care, should have known or could easily have ascertained" the relevant fact—here, whether the items were ancient—that party is deemed to have been "[c]onscious[ly] ignoran[t]" and barred from seeking rescission or other damages. The conscious ignorance exception applies only where a party is aware that his knowledge is limited but decides to contract anyway "in the hope that the facts accord with his wishes," thus assuming "[t]he risk of the existence of the doubtful fact . . . as one of the elements of the bargain." The court held that both plaintiff and defendants shared the mistaken belief that the Faustina Bust and the Etruscan Warrior were "ancient." But the court also found that the record at this time does not support a finding that Eisenberg did not consciously ignore his uncertainty as to a crucial fact. Questions exist as to whether Eisenberg genuinely believed the bust and statue to be ancient, or was aware that they might not be ancient but decided to assume this risk. Hall presented evidence that Eisenberg is an expert on classical antiquities and a qualified appraiser who gener-ally relies on his own expertise in evaluating works unless he is unsure of a piece's authenticity. He could thus have reasonably accepted that the items were ancient "based on [a] rational assessment of the source and style of work." Moreover, as to the Etruscan Warrior, Hall admittedly informed Eisenberg that he believed it to be from the private collection of renowned art collector J. Pierpont Morgan as signified by a painted red number. Eisenberg could have rationally relied on Morgan's

reputation in addition to his own observations. However, plaintiff Eisenberg also admits in its com-plaint that several other items purchased from defendants later turned out to be inauthentic. This suggests that plaintiff should have been on notice that the items might not be ancient—at least by the time of the later Etruscan Warrior purchase. The circumstances surrounding the transactions, including the visits to Hall's townhouse and bedroom, with little or no discussion of the provenance of the pieces, as well as plaintiff's admission that several other items purchased from defendants turned out to be inauthentic, cast plaintiff's professed certainty as to the authenticity of the items into doubt and could support a finding that plaintiff was on notice that the items might not be ancient. DECISION AND REMEDY: Denial of plaintiff's motion for summary judgment affirmed. SIGNIFICANCE OF THE CASE: This case shows how a court analyzes an issue of mutual mistake, as well as the "conscious ignorance" exception to the doctrine. CRITICAL THINKING The dissent in the case wrote that Eisenberg's motion for summary judgment should have been granted. Wht do you think the reasoning for granting the motion would be? ETHICAL DECISION MAKING What values are furthered by the outcome in this case? Page 263Page 264 E-COMMERCE and the Law Contracts have been around as long as people have been making deals, and the relatively recent advent of the Internet has changed the way we think of a vital aspect of contracts, legal assent. Unlike traditional contracts, in which assent is often confirmed either through a signature or a verbal affirmation, Internet users typically do not communicate with a web host or app developer before using a website or app. In spite of this, hosts and developers still often have a number of terms and conditions they would like users to follow when using their product. The first solution to this issue was the browsewrap agreement. Browsewrap agreements (so named due to their similarity to agreements packaged with some products under shrink-wrap) are a set of terms and conditions simply placed somewhere on a website or app. Browsewrap agreements always contain a clause stating in some manner that by using the site or app, the user agrees to these terms and conditions. The issue with browsewrap agreements, however, was that they were often placed on some obscure corner of a website or app and users rarely ever came across them. Thus, courts often ruled that browsewrap agreements were unenforceable because users often did not even know they existed, let alone agreed to them. Nowadays, most sites and apps use clickwrap agreements instead. Clickwrap agreements present a user with the terms and conditions the minute they visit a site, open an app, or begin an online purchase. To continue using the service, the user must click a box stating that they agree to the service's terms and conditions.

Clickwrap agreements bring the terms and conditions front and center and give users ample opportunity to review them, and thus these types of agreements have been held to be enforceable much more often than browse-wrap agreements.


The insurance companies are fighting about "mutual mistake." I thought they were talking about the accident, but it's actually about the wording of the insurance documents.
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Misrepresentation LO 12-3 Recall the elements of misrepresentation. Misrepresentations are similar to mistakes. In both cases, at least one of the parties is in error about a fact material to the agreement. But a misrepresentation is an untruthful assertion by one of the parties about a material fact. One party said something that prevented the parties from having the mental agreement necessary for a legal contract. The parties only appeared to agree, so their contract lacked legal assent. The courts insist that there must be a meeting of the minds for a valid contract. Thus, they might rescind a contract even though the person making the false assertion was entirely innocent of any intentional deception. Innocent Misrepresentation An innocent misrepresentation is a false statement about a fact material to an agreement that the person who made the statement believed to be true. The person who made the false statement had no knowledge of the falsity of the claim. We say the person lacked scienter. In the case opener, given that Knafel's doctor had estimated the time she became pregnant to be when she was in Phoenix with Jordan, it is likely that the court would find that she did not realize that she was misrepresenting who the father of her child was. Innocent misrepresentations permit the

party that was misled by the false statement to rescind the contract. However, because the party that made the false statement had no intent to mislead, the aggrieved party cannot sue for damages. The reasoning in such cases is similar to the arguments in a mutual-mistake case, as you might expect. BUT WHAT IF. . . WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT? Let's say that in the Case Opener, Knafel was incorrectly told by her doctor that the baby was Jordan's. She then told Jordan that she indeed was carrying his baby. Thus, Jordan signed the contract and paid Knafel a large sum of money. Later, the two found out the baby was not Jordan's. What kind of misrepresentation occurred? Can Jordan sue for damages? Page 265 Negligent Misrepresentation In some contract negotiations, one party makes a statement of material fact that he thinks is true, but he is negligent in making the assertion. Such a negligent misrepresentation results when the party making the statement would have known the truth about the fact had he used reasonable care to discover or reveal it. Even though there was no actual intent to deceive, the party making the false statement is treated in contract law as if the intent were present. If this standard seems unfair to you, remember that the courts find negligent misrepresentation only when the party making the false statement should have known the truth had they used the skills and competence required of a person in their position or profession. The impact of negligent misrepresentation is identical to that of fraudulent misrepresentation, discussed next. Fraudulent Misrepresentation Any fraud on the part of a party to a contract provides a basis for rescission. The parties cannot be said to have assented when one of the parties was tricked into the agreement by a fraudulent misrepresentation. Thus, the agreement was not voluntary and can be rescinded on the grounds that there was no meeting of the minds. Even in countries that are trying to encourage joint ventures and global commercial activity, such as China, fraudulent claims can end the country's hospitality to agreements with outsiders. In China, accusations of outsiders' fraudulent misrepresentation have resulted in heavy fines and even refusals to allow the fraudulent party to enter into any more agreements with Chinese firms. The point is that in most, if not all, cultures there is little judicial sympathy for those who consciously mislead others in commercial activities. A fraudulent misrepresentation is a false representation of a material fact that is consciously false and is intended to mislead the other party. Fraudulent misrepresentation is intentional misrepresentation. Here, scienter is clear. The party making the misrepresentation either knows or believes that the factual claim is false or knows that there is no basis for the assertion. To understand the requirements for a finding of fraudulent misrepresentation,

start with the two elements from the definition: A false statement about a past or existing fact that is material to the contract. Intent to deceive. Intent can be inferred from the particular circumstances. Then add a third necessary element: Justifiable reliance on the false statement by the innocent party to the agreement. Justifiable reliance is generally present unless the injured party knew, or should have known by the extravagance of the claim, that the false statement was indeed false. For example, a person could not justifiably rely on a claim by another that a hair on their head, although worth $1,000, was available for $10. Finally, if damages are sought, the defrauded party must have been injured by the misrepresentation. BUT WHAT IF. . . WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT? Let’s say that in the Case Opener, Knafel had Jordan sign a contract stipulating that he must make monthly payments to her for the baby they both believed was genetically theirs together. Then, Knafel discovered the baby was not in fact Jordan’s but did not relay the information to him. What kind of fraudulent misrepresentation occurred here? Page 266 Each of these elements can become a source of debate in any attempt to rescind a contract on grounds of fraudulent misrepresentation. Thus, it is your responsibility as a person who will be involved with dozens of contracts in your business activities to know these elements. A rescinded contract is a time-consuming and expensive business opportunity that has gone wrong. Pay careful attention to the facts in Case 12-2 and decide whether you believe the defendant committed fraud. CASE 12-2 FANTASTIC SAMS SALONS CORP. v. PSTEVO, LLC AND JEREMY BAKER United States District Court for the Northern District of Illinois, Eastern Division 2016 U.S. Dist. LEXIS 5590 (2016) FACTS: Fantastic Sams Salons entered into a franchise agreement with PSTEVO, LLC and Jeremy Baker (collectively, “PSTEVO”) in which Fantastic Sams allowed PSTEVO to operate a Fantastic Sams franchised salon. Later, Fantastic Sams initiated a lawsuit against PSTEVO seeking declaratory relief with regard to the franchise agreement. In other words, Fantastic Sams wanted a court to clearly spell out the rights that Fantastic Sams held under the agreement. PSTEVO then asserted several counterclaims, including a claim of fraudulent misrepresentation by Fantastic Sams. PSTEVO alleged that, prior to entering into the franchise agreement, Baker met with two agents of Fantastic Sams who presented Baker with several financial disclosure documents. The documents allegedly stated that PSTEVO only needed three months' worth of working capital to open the salon, and that the salon would be profitable after this three-month period. PSTEVO alleged that the agents and Fantastic Sams knew that it would take longer than three months for the salon to be profitable, and that these

misrepresentations were material because PSTEVO relied on them when deciding whether to enter into the agreement. Fantastic Sams moved to dismiss the fraudulent misrepresentation claims. ISSUE: Did Fantastic Sams have the right, under the franchise agreement, to dismiss the misrepresentation claims? REASONING: Fantastic Sams moved to dismiss PSTEVO's fraudulent misrepresentation claim by way of Federal Rule of Civil Procedure 12(b)(6). This means that Fantastic Sams was essentially arguing that PSTEVO failed to allege one or more of the key elements of a fraudulent misrepresentation claim, and therefore PSTEVO's claims were not sufficient enough to bring to trial. The court relied on the criteria for FRCP 12(b)(6) set forth in Ashcroft v. Iqbal, which stated that for a claim to survive this rule, it must be facially plausible: "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." When arguing why PSTEVO's claims were insufficient, Fantastic Sams pointed to a disclaimer in the franchise agreement that read, "No oral, written or visual claim or representation which stated or suggested any sales, income or profit levels was made to me, except:" after which Baker had written "none" and initialed his response. Fantastic Sams argued that Baker had signified that no claims regarding the franchise's profitability were made to Baker. Thus, PSTEVO was precluded from claiming that it relied on Fantastic Sams' or its agents' representations of the franchise's profitability because no such representations were made. Being that reliance is a necessary element of a fraudulent misrepresentation claim, Fantastic Sams argued that PSTEVO's claim necessarily fails because PSTEVO could not argue reliance. The court considered that Baker had, indeed, affirmed that no representations of profitability were made to him, as evidenced by his initials. Baker could therefore not argue that he relied on claims of profitability. The court ruled that PSTEVO's claims were not facially plausible because, lacking this reliance, PSTEVO was precluded from making a convincing claim that Fantastic Sams was liable for fraudulent misrepresentation. DECISION AND REMEDY: The court granted Fantastic Sams' motion to dismiss the fraudulent misrepresentation claims under FRCP 12(b)(6). SIGNIFICANCE OF THE CASE: This case is important because it demonstrates the importance of being able to prove all of the elements of misrepresentation. CRITICAL THINKING According to the judge's reasoning, it was PSTEVO's own actions that led to the case being dismissed. Should PSTEVO have done differently? ETHICAL DECISION MAKING What general values might the court be interested in protecting in this ruling? How are they similar to values upheld by other cases in this chapter? How are they different? What opposing values are less

important in these rulings? Page 267 Let’s now revisit each of the elements of fraudulent misrepresentation. Although the elements may have seemed relatively straightforward when they were presented, they become more complicated in the context of actual disagreements among parties to a contract. False Assertion of Fact For fraudulent misrepresentation to be the basis for a contract rescission, the statement of fact need not be an actual assertion. Either concealment or nondisclosure can be treated as the equivalent of an actual assertion. Concealment involves the active hiding of the truth about a material fact, for example, removing 20,000 miles from the odometer on your car before selling it to me. Nondisclosure is different because it involves a failure to provide pertinent information about the projected contract. The courts have until recently been hesitant to use nondisclosure as a basis for rescinding a contract because it is a passive form of misleading conduct. Under ordinary situations associated with a legal bargain, it is not the obligation of one party to bring up any and all facts he or she might possess. Each individual is, to a large extent, treated as a responsible decision-maker. GLOBAL Context Digital Archive Japan/Alamy Stock Photo Consumer Contracts Law in Japan In 1997, after studying the application of civil law in the country, the Japanese Social Policy Council, an advisory body to the prime minister, recognized that the environment surrounding consumers was growing more diversified, and there was a significant gap between consumers and businesses in their access to information and knowledge as well as in their negotiating power. Because it cannot honestly be said that consumers and businesses are equal, as contracting parties are presumed to be under the country’s Civil Code, the council developed a special Consumer Contracts Law. This legislation is considered to place consumers and businesses on a more equal footing in transactions. Under the Consumer Contracts Law, if a business fails to provide a consumer with information or makes misrepresentations concerning basic or other important contractual matters that are necessary for the consumer to make a judgment about the contract, and if the consumer would not have entered into the contract had the information been provided or the misrepresentation not been made, the consumer may cancel the contract. This provision is applicable whenever a business, in trying to induce a consumer to enter into a contract, (1) fails to provide information about the contents of the contract, (2) fails to provide important information necessary for the consumer to make the decision to enter into the contract, or (3) makes misrepresentations. In many such cases, the consumer would not have been entitled to relief under the Civil Code because of its strict requirements for the application of fraud. However, courts will now find

nondisclosure as having the same legal effect as an actual false assertion under certain conditions: A relationship of trust exists between the parties to the contract. In this situation, the relationship provides a reasonable basis for one person’s expectation that the other would never act to defraud him or her. There is failure to correct assertions of fact that are no longer true in light of events that have occurred since the initial consent to the terms of the agreement. An illustration is my failure to inform you of the recent outbreak of rust on my rust-free car that you have agreed to purchase next month. Nondisclosure is especially likely to provide the basis for rescission when one party has information about a basic assumption of the deal that is unavailable to the other party. As a result of this logic, sellers have a special duty to disclose because they know more about the structural makeup of the item being purchased. Page 268 Intent to Deceive Scienter is present when the party accused of making the fraudulent assertion believed that the assertion was false or made the claim without any regard for whether it was true or false. Alternatively, intent to deceive is present when the party making the false statement claims or implies that he or she has personal knowledge of the accuracy of the assertion. Any resulting assent is not legal because the injured party was not allowed to join the mind of the deceiving party. The party with scienter or intent to deceive wanted the contract to be fulfilled on the basis of a falsehood. Justifiable Reliance on the False Assertion What responsibilities does the injured party have when a false assertion was made by the other party? As we said earlier, the injured party has no justifiable claim of fraud when he or she relied on assertions that should have been obviously false. Anyone who pays for a house in reliance on the claim that it was built before the founding of our country cannot later try to rescind the contract on grounds of fraudulent misrepresentation. In addition, parties to contracts cannot successfully claim they justifiably relied on a false assertion of fact when the error in the statement would have been clear to anyone who had inspected the item being exchanged. However, even this duty to inspect is declining in modern contract law. Increasing responsibility is being placed on the person who made the erroneous assertion. E-Commerce and the Law Fraudulent Misrepresentation in Social Media Online social media offer a prime opportunity for individuals to create false identities. In some cases, these false identities are then used to communicate with unsuspecting individuals, often causing the real individuals who communicate with the misrepresented identities to experience financial or emotional harm. A tragic example of this is the case of United States v. Lori Drew, in which Drew created the false identity of a boy on the MySpace networking site. Megan Meier, a young girl, was lured by

Drew and Drew's daughter to strike up a relationship with the false identity. When the so-called boy broke up with Meier, Meier unfortunately committed suicide. The prosecution of Drew was unsuccessful. A major issue with the prosecution was that there was no federal statute against cyberbullying, and the judge did not feel comfortable relying on a breach of contract premise, which would make this case of fraudulent misrepresentation equivalent to a case of computer hacking. As the likelihood of fraudulently misrepresenting an individual increases, misrepresentation must be addressed by statutes that cover all possible aspects in which fraudulent representation could occur. Source: Kim Zetter, "Judge Acquits Lori Drew in Cyberbullying Case, Overrules Jury," Wired.com, July 2, 2009.

Undue Influence LO 12-4 Recall the elements of undue influence. When legal assent is present, both parties to the agreement are assumed to have made their own choices based on complete freedom to consent to or reject the terms of the bargain. However, many factors in our lives can work together to make our choices anything but free. Undue influence refers to those special relationships in which one person has taken advantage of his or her dominant position in the relationship to persuade the other person to enter into a contract. The persuasive efforts of the dominant person must have interfered with the ability of the weaker person to make his or her own decision. When people are bargaining with their attorney, doctor, guardian, relative, or anyone else in a relationship involving a high degree of trust, they can be persuaded by unusual pressures unique to that relationship, resulting in a contract that is voidable due to undue influence. Page 269 If someone believes undue influence has occurred, asking the following questions can help establish whether there was undue influence: Was the dominant party rushing the other party to consent? Did the dominant party gain undue enrichment from the agreement? Was the non-dominant party isolated from other advisers at the time of the agreement? Is the contract unreasonable because it overwhelmingly benefits the dominant party? The more of these questions that are answered in the affirmative, the more likely a court is to determine undue influence existed. The Case Nugget below provides an illustration of undue influence. CASE Nugget A Case of Undue Influence Evan Rothberg v. Walt Disney Pictures 1999 U.S. App 1472 Robert Jahn was a senior executive at Walt Disney Pictures until he died of complications from AIDS. Days before his death, a Disney official visited him at the hospital and convinced him to sign a release that waived his rights to approximately $2 million in employee benefits, including life insurance, stock

options, bonuses, and deferred compensation. After his death, his estate sued to recover the benefits waived in the release. Disney received a motion for summary judgment, and the plaintiff appealed. In reversing the motion for summary judgment, the court ruled that the question of whether the release had been procured by undue influence was a question for a jury. The court pointed out that undue influence requires (1) undue susceptibility on the part of the weaker party and (2) application of excessive pressure by the stronger party. In this case, the first fact was self-evident. The defendant was in the hospital and was fearful that Disney would expose information that would destroy his reputation. Regarding the second element, however, the court noted that in most undue-influence cases, and this case was no exception, direct evidence is rarely obtainable and thus the jury must decide the issue on the basis of inferences drawn from all the facts and circumstances. Thus, the court said that summary judgment was improper. Page 270 Duress LO 12-5 Recall the elements of duress. Duress is a much more visible and active interference with free will than is undue influence. Duress is found when one party was forced into the agreement by the wrongful act of another. The wrongful act may come in various forms. Any of the following would trigger a successful request for rescission on grounds of duress: One party threatens physical harm or extortion to gain consent to a contract. One party threatens to file a criminal lawsuit unless consent is given to the terms of the contract. (Threats to file a civil case against a party do not constitute duress unless the suit is frivolous.) One party threatens the other's economic interests (this is known as economic duress). For instance, Jim refuses to perform according to a contract unless Ellen either signs another contract with him or pays him a higher price than that specified in the original agreement. GLOBAL Context Steve Allen Travel Photography/Alamy Stock Photo Duress in India In Indian law, duress is referred to as coercion, or the committing of or threatening to commit any act forbidden by the Indian Penal Code to force a person into entering an agreement. To prove coercion, the plaintiff must establish that (1) there was a clear utterance of threat; (2) the threat referred to an act forbidden by the Indian Penal Code; (3) the act was committed with the intention to cause the plaintiff to enter into an agreement; (4) there was unlawful detaining of or threat to detain any property; (5) coercion was employed by a party or by his agent; and (6) the plaintiff is a party or any other person with some interest in the agreement. Indian contract law distinguishes between physical coercion and moral coercion. Physical coercion may include threats to commit suicide. In contrast, moral coercion is synonymous with undue influence. The Indian Contract Act states that a contract is induced by undue

influence when the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and the dominating party uses that position to obtain an unfair advantage over the other. Quite unlike the concept of duress in the United States, the Indian concept of moral coercion, or undue influence, includes the unique consideration of pardanashin ladies in contract law. In India, a pardanashin woman is a woman who lives in seclusion without communication with any male except for specific male relatives. Indian law gives protection to pardanashin ladies on the grounds that “they are ignorant so far as the worldly knowledge goes.” Any contract with a pardanashin woman is automatically presumed to have been induced by undue influence. In India, a major difference between acts of coercion and acts of undue influence is the legal consequence of each action. In cases of coercion, the agreement obtained by coercion is automatically voidable. In cases of undue influence, the contract is either voidable or is set aside. Factors that enter into the finding of undue influence include the following: Inadequacy of consideration. Inequality between the parties in regard to age, intelligence, or social status. Fiduciary relationship between the parties. Unconscionable bargains. Pardanashin women. The more of these factors present, the more likely a court is to rescind the contract on grounds of undue influence. The injured party makes the case for duress by demonstrating that the threat left him or her with no reasonable alternatives. The point is that the free will necessary for legal consent had been removed by the specifics of the threat. The following Case 12-3 is an illustration of a successful use of economic duress. Page 271 CASE 12-3 GARAGE SOLUTIONS v. MONTY J. PERSON Court of Appeals of Louisiana, Third Circuit 201 So.3D 962 (2016) FACTS: Defendant Monty J. Person began working for Garage Solutions, LLC, in March 2015. Three months into his employment, Person was sent by the owner of Garage Solutions Mark Fontenot to Rexburg, Idaho, and Little Rock, Arkansas to complete corporate training. Two days before he was scheduled to leave for training, Person was presented with three contracts. One was a non-competition contract, and the remaining two were training reimbursement contracts. The reimbursement contracts stated that Person would refund the cost of the training if he left the company within one year of completing the training. While Person never signed the non-competition contract, he signed the two reimbursement contracts one month after the conclusion of his corporate training. In August 2015, Person left Garage Solutions, and the company filed a suit seeking compensation from Person. While Person did not raise an affirmative claim of duress, the trial court determined that the contract was unenforceable because Person was indeed under duress when

he signed the contracts. The plaintiffs appealed. ISSUE: Was Person under economic duress when he signed the contracts? REASONING: The court noted that the contracts signed by Person were themselves textually sound. However, after reviewing the facts of the case, the court found the validity of the contracts to be in question. Fontenot had discussed with Person the possibility of Person signing a noncompetition agreement if he received training. However, Person wasn't presented the contracts until two days before he was scheduled to leave for training. Upon initially receiving the contracts, Person refused to sign them. Person later testified that he only signed the contracts upon returning because Fontenot refused to pay him his wages until he signed. The court then pointed to precedent holding that "[F]ear of economic deprivation has been recognized as a type of duress that will vitiate consent." Although Person did not initially raise the defense of duress, the court found there to be evidence enough to enlarge the scope of the pleadings, especially since Garage Solutions did not object. Being that Person was under duress, he did not lawfully consent to the agreements. Because there was no consent, there was no contract as well as harm to the company's goodwill and reputation. DECISION AND REMEDY: Affirmed in favor of Person. SIGNIFICANCE OF THE CASE: This case shows that even a properly-written contract can be rendered entirely invalid if the circumstances surrounding the agreement are unfair. CRITICAL THINKING Do you think the outcome of the case could have been affected if Fontenot had presented the contracts earlier? Is the timing of the contracts a nonissue? ETHICAL DECISION MAKING Do you think it is fair to the plaintiffs for the court to enlarge the defendant's pleadings to include the duress claims? What ethical values does this decision support? GLOBAL Context Digital Archive Japan/Alamy Stock Photo Defects in Assent in the Philippines The law in the Philippines is somewhat unusual in the way it limits the time for rescinding a contract. In the Philippines, if consent is given through mistake, violence, intimidation, undue influence, or fraud, contracts are valid until they are annulled. The period within which to annul such a contract is four years. In cases of intimidation, violence, or undue influence, the time period is measured from the time the defect in the assent ceases. In cases of mistake or fraud, it is measured from the time of the discovery of the defect. Page 272 CASE OPENER WRAP-UP A Disagreement over an Agreement The trial court agreed with Michael Jordan's argument regarding a mutual mistake or fraudulent misrepresentation in the contract. Knafel appealed, and the court affirmed the lower court's decision. The court held that Knafel's representation to Jordan that he was the father met the requirements of being (1) a material fact; (2) made for the purpose of inducing Jordan to act;

(3) that either was known by Knafel to be false or was not actually believed by her on reasonable grounds to be true, but Jordan reasonably believed it to be true; and (4) that was relied on by Jordan to his own detriment. Thus, the appellate court found that Knafel's representation that Jordan was the father constituted fraud. The agreement can be rescinded because Jordan would not have entered into the agreement but for the fraudulent representation made by Knafel. Even if Knafel did not act fraudulently, at the time the agreement was created both parties believed that the child was Jordan's. After the paternity tests revealed that the baby was not Jordan's, the agreement could still be rescinded based on a mutual mistake of fact. PRACTICAL TIPS for Business Managers Costly mistakes can often arise because someone is making an assumption that the other party is not making. It is a good idea, when you are about to either draft or sign a contract, to ask yourself whether there are any questionable assumptions you are making that might not be shared by the other party to the potential contract. You do not want to be sued for misrepresentation, so before you make any assertions of material fact related to a contract, make sure that you are certain of those facts. If you are about to enter into a contract with a party with whom you have what might be perceived as a dominant-subservient relationship, and you could be perceived as the dominant party, advise the weaker party to get legal advice before entering into the contract, to ensure the contract is enforceable.

SUMMARY The Importance of Genuine Assent If assent is not genuine, or legal, a contract may be voidable. For purposes of planning, it is important for people to understand the circumstances under which failure of assent may render their contracts voidable. Mistake Mistakes are erroneous beliefs about the material facts of a contract at the time the agreement is made. They may be either unilateral or mutual. Only under certain rare conditions is a unilateral mistake a basis for rescinding a contract. However, if both parties to a contract are mistaken about a material fact, either can opt to rescind the contract. In cases of mutual mistake, the agreement was not based on a meeting of the minds, a basic criterion for legal assent. Misrepresentation Misrepresentation is an intentionally untruthful assertion by one of the parties about a material fact. An innocent misrepresentation occurs when the party making the false assertion believes it to be true. The misled party may rescind the contract. When a misrepresentation is fraudulent, any assent that is given is gained by deceit. The courts permit rescission for fraudulent misrepresentation. In addition to requiring false

assertion and the intent to deceive, fraudulent misrepresentation also requires justifiable reliance on the assertion by the innocent party. “If the misrepresentation is negligent, that is, made when the defendant would have known the statement was false had he taken reasonable care before making the statement, the misrepresentation is treated the same as a fraudulent misrepresentation.” Undue Influence Undue influence refers to the persuasive efforts of a dominant party who uses a special relationship with another party to interfere with that other’s free choice of the terms of a contract. Any relationship in which one party has an unusual degree of trust in the other can trigger concern about undue influence in gaining the assent of the more dependent party. Duress Duress occurs when one party threatens the other with a wrongful act unless assent is given. Such assent is not legal assent because coercion interferes with the threatened party’s free will. For a court to rescind the agreement, the injured party must demonstrate that the duress left no reasonable alternatives to agreeing to the contract.

Point/Counterpoint The principles of legal assent are based on the belief that, in the main, each person can look out for himself or herself. Thus, parties are usually held to the agreements they make on the grounds that the terms were reached by decisions guided by the free wills of both parties. But we live in a world of rapid technological change, where chemicals, fibers, and services come in a blinding array of complexity that could make decision-making more difficult for some people. Should Contracts Made through Tweets Be Legally Binding? YES No Whether it’s spoken or handwritten, transmitted to a television screen or broadcast over the airwaves, shouted from the top of a building or tweeted in 140 characters or less, speech is speech. No matter what form speech comes in, people are legally liable for the thoughts that they express. The First Amendment grants certain protections for speech, but it is not intended to be a shield for those who wish to spew forth whatever crosses their mind without fear of consequence. When one communicates an offer under sound mind, they are, at least to others, expressing to the rest of the world that they are willing to enter into a contract. Regardless of the mode that was used to express the offer, the offer was made and the speaker is liable for that speech. Tweets are no exception to this doctrine. Besides a possible difference in size of audience, tweets are practically no different than putting an offer in writing and posting it around town for the public to see. Moreover, by not regarding tweets as potentially contractually binding, the law will essentially be allowing people

to feign offers and then rescind them even after the offer has been accepted. Any kind of agreement through Twitter is effectively one-sided in favor of the offerer because the legal system would not recognize the agreement as binding, whereas in nearly any other circumstance, written or not, the agreement would be binding. Thus, Twitter users can effectively get away with making agreements with impudence through tweets. Some would argue that, due to the ambiguous nature of text-based communication on the Internet, it's hard to tell whether or not someone is serious about what they "say" online. Therefore, we shouldn't take anything said on the Internet, especially Twitter, seriously. In reality, though, the law should take just the opposite stance: everything said online that does not include some kind of disclaimer should be taken seriously. It's simply too dangerous not to in some cases. For example, if a person threatens to kill another through Twitter, the authorities do not stop to consider whether the poster is joking, they take action. Sitting around and debating whether the threat is serious could lead to someone being killed. While the need for tweets to be taken seriously under other circumstances can be seen more clearly, the law should remain consistent and consider apparent contracts as legally serious as well if it cannot be clearly determined in the court's eyes whether or not the poster was serious. With today's rapidly advancing technology, the ways in which we communicate with each other are changing almost every day. Indeed, with its 140-character limit and focus on tiny spurts of communication, it would have been nearly impossible to predict a form of conversation as unique as Twitter. In fact, it is this uniqueness that sets Twitter apart from essentially all other types of communication. Sure, you can speak to another person in short bursts, à la tweet, but it's not quite the same thing as a mode of articulation that forces miniature messages that has spawned a culture and attitude all its own. In fact, it is this culture of accepted insignificance or nonseriousness of a single tweet that truly sets it apart from other forms of communication and therefore does not make it fit for legally binding contracts. The problem with treating tweets as serious legal speech fit for contracts is that tweets, as of yet, have not been been accepted as anything more than curt expressions of opinion or personality, or perhaps as a means to share small bits of information with a particular group of Twitter users. Sure, people often have arguments through tweets or attempt to make profound personal statements in their petite allotment of words, but these types of tweets are often mocked for taking Twitter too seriously. The point is that Twitter has yet to be recognized as a serious form of communication, even by its users, and thus is no place for serious legally binding agreements to be invoked. Perhaps Twitter could evolve to someday be a shining star of

intelligent, serious conversation, but legal discourse is simply counterintuitive to the purpose of Twitter as it stands today. In fact, if Twitter were suddenly to be considered an apt forum for legal discourse and contractual obligation, its lackadaisical tone could lead to difficulties in the area of making offers and forming contracts. For example, sarcasm is a rather popular way of expressing one's self on the Internet. Unfortunately, due to the lack of speech-based communication, with its varying intonations and volumes that aid in expressing emotion, it can be very difficult to decipher when a tweet is intended to be taken seriously or in jest. If I were to jokingly tweet, "Boy, I'm so hungry, I would give $1,000 to anyone who brought me a doughnut," have I just made an offer that someone can accept and contractually bind me to? Now of course, written contracts also lack speech to determine the intent of what is written, but said contracts are practically universally written to say just what they intend. Tweets, on the other hand, do not always intend what they actually say. Imposing a sudden expectation of contractual obligation to tweets (as has been done) simply makes no sense given the nature of tweets themselves.

Questions & Problems Explain the difference between a unilateral mistake and a mutual mistake. Explain when a unilateral mistake can lead to rendering a contract voidable. Distinguish innocent misrepresentation from fraudulent misrepresentation. Explain how nondisclosure can be treated as misrepresentation. Explain the primary differences between duress and undue influence. Kyle Connaughton was actively pursuing potential buyers for a ramen restaurant concept that he had created. Eventually, Chipotle's CEO, Steven Ells displayed interest in Connaughton's plan. Connaughton then tried to cater the design to fit Chipotle's needs. Ells initially offered to purchase the ramen restaurant concept, but eventually formed an agreement with Connaughton whereby Connaughton would continue to develop and implement the concept as a Culinary Director employed by Chipotle. Connaughton was on track to launch a restaurant in New York towards the end of his second year of employment. However, he learned from Chipotle's chief marketing officer (CMO) that Ells had a non-disclosure agreement (NDA) with another chef who had previously worked on the ramen restaurant concept with Chipotle. The previous arrangement ended after the two parties could not find mutually acceptable terms and the CMO informed Connaughton that the other chef would sue if the restaurant was launched. Connaughton brought up the NDA to Ells, who told Connaughton to continue working on the restaurant. Connaughton refused and was fired shortly

thereafter. Following his dismissal, Connaughton sued Chipotle and Ells for fraudulent inducement, asserting that if it were not for his reasonable reliance on Ell's omissions about the previously contracted work on the ramen restaurant concept, he would not have agreed to work with Chipotle. Furthermore, Connaughton claimed he was damaged for lost business opportunities in connection to the ramen restaurant concept and that working for Chipotle had opened him up for liability to the chef that had signed an NDA. The trial court sided with Chipotle and the plaintiff appealed. How do you think the appeals court ruled? Why? Source: Connaughton v. CHIPOTLE INC., 29 NY 3d 137 (2017). Nationwide Insurance developed a program to recruit new insurance agents by offering planning, training, and start-up financing to build self-sustaining agencies. These new agents would be independent contractors who would agree to exclusively sell and service Nationwide products. In 2005, Nationwide recruited Christine Lucarell under this program. Based on a business plan developed by Nationwide, Lucarell anticipated revenues of $200,000 a year. Nationwide provided Lucarell with a $290,000 loan to start up her agency and provided her with minimum production requirements, although Lucarell alleged that these requirements were never part of her contract. Page 275 Lucarell used the loan to start her agency in 2006, renting and furnishing office space, hiring two employees, and throwing a grand-opening party. Lucarell initially exceeded her minimum production requirements and won awards for her performance but eventually began having difficulty bringing in new customers and maintaining her cash flow. In 2007, Lucarell met with her sales manager and signed an agreement in which Nationwide would provide her with $15,000 and reimburse $35,000 in business expenses in exchange for her to "completely release and forever discharge any and all claims which Agent may have against Nationwide. . ." Lucarell testified that when she signed the agreement, she had "no choice . . . They would have terminated me and my agency, and my loan would become due in full." Nationwide provided Lucarell with a new business plan, but she continued to fall short of the minimum requirements. Lucarell eventually resigned in 2009. Lucarell sued Nationwide for breach of her agreement and fraudulent misrepresentation. Nationwide counterclaimed for the balance due on her loan. Lucarell claimed that Nationwide had lied to her about the potential success of her agency, and then forced her to sign the second agreement under duress of enforcing the loan against her. The trial court found in favor of Lucarell on all claims. Nationwide appealed. How do you think the appellate court ruled? Was Lucarell truly under duress when she signed the second agreement? Lucarell v. Nationwide Mut. Ins. Co., 152 Ohio St.3d 453, 2018-Ohio-15. Source: Martha Rochelle v. Hartley Mead,

2015 Conn. Super. LEXIS 2587 (2015). In 2013, Thomas DePrince, a passenger aboard a cruise ship, visited the ship's jewelry boutique, operated by Starboard Cruise Services, Inc. DePrince told the employees of the boutique that he was interested in purchasing a loose, 20-carat diamond. The boutique itself did not carry diamonds of that size, so the store's manager emailed Starboard's corporate office to inquire about the availability of such a gem. The manager, in turn, contacted a diamond broker in New York, who listed two diamonds, one with "selling price of $235,000." The employees sold the diamond to DePrince for $235,000 and told him that the diamond would be waiting for him when the ship docked. There was just one problem, however: the Starboard employees had never sold a large loose diamond before, and did not realize that the quoted price was per carat. In other words, the true price of the diamond was $4.7 million, and they had contracted to sell it for $235,000. After realizing their mistake, the employees reversed the charge and told DePrince that the sale was off. DePrince sued to enforce the contract. Starboard claimed it should be able to rescind the contract due to unilateral mistake. How should the court rule in this case? DePrince v. Starboard Cruise Services, Inc., No. 3d16-1149, 2018 W 443153 (Fla. 3d DCA 2018). Audrey Vokes was a 51-year-old widow who wanted to become an accomplished dancer. She was invited to attend a dance party at J. P. Davenports's School of Dancing, an Arthur Murray franchise. She subsequently signed up for dance classes, at which she received elaborate praise. Her instructor initially sold her eight half-hour dance lessons for $14.50 each, to be used one each month. Eventually, after being continually told that she had excellent potential and that she was developing into a beautiful dancer—when in fact she was not developing her dance ability and had no aptitude for dance—she ended up purchasing a total of 2,302 hours' worth of dance lessons for a total of $31,090.45. When it finally became clear to Vokes that she was not developing her dance skills, in part because she had trouble even hearing the musical beat, she sued Arthur Murray. What would be the basis of her argument? Her case was initially dismissed by the trial court. What do you think the result of her appeal was? Source: Vokes v. Arthur Murray, 212 So. 2d 906 (1968). The W.C. Bradley Company needed help with a major software overhaul. W.C. Bradley contacted itelligence, Inc., to handle to overhaul. itellgence told W.C. Bradley that it had experienced employees that could meet W.C. Bradley's software needs. After extensive negotiations, the two firms entered into an agreement for the implementation of a new software system. However, according to W.C. Bradley, things went downhill from here. W.C. Bradley claimed that although itelligence had knowledgeable personnel who said all the right

things during negotiations, the employees sent to actually handle the project did not have the capability or expertise to implement the new software system successfully. After the first major rollout of the new software failed, W.C. Bradley threatened to fire itelligence. itelligence responded by saying it would fix the problems, and W.C. Bradley gave itelligence a second chance. itelligence charged W.C. Bradley for these fixes, and yet the software still failed to work properly. W.C. Bradley terminated the contract and brought suit against itelligence. What claims do you think W.C. Bradley advanced against itelligence? How do you think the court ruled on those claims? WC Bradley Co. v. itelligence, Inc., No. 4: 17-CV-208 (CDL) (M.D. Ga. 2018). Page 276 Patty Hayes owned four Personal Seat Licenses (“PSLs”) at the Cleveland Browns Stadium. Hayes’s PSLs reserved four seats on the 50-yard line, at the railing, on the north side of the stadium. As the owner PSLs, Hayes was obligated each year to purchase season tickets for the seats which she could then use or sell. Failure to purchase season tickets would result in the PSLs reverting back to the Cleveland Browns and the seats being available to those on a waiting list. Donald Younker heard about Hayes’s PSLs through a coworker. Younker communicated with Hayes through email and purchased Hayes’s season tickets at face value for the 2014 and 2015 seasons. At the end of the 2015 season, Younker asked Hayes if she would sell the PSLs to him. Hayes claimed that she paid $8,000 for the four PSLs and would like to receive $4,000 for them. Younker agreed and sent Hayes a check for the full amount. Afterward, Hayes contacted the Cleveland Browns’ front office to execute the neces-sary transfer paperwork. The front office told Hayes that the PSLs were worth approximately $10,000 each and that there was a 40-year waiting list for those seats. Based on this information, Hayes advised Younker that she could not commit to selling him the PSLs for $4,000. Younker filed a complaint for breach of contract and sought specific performance and money damages. The trial court ruled in favor of Hayes in terms of damages on the grounds of mutual mistake. Younker appealed. Do you think the court incorrectly applied the doctrine of mutual mistake here? Why or why not? Younker v. Hayes, 108 N.E.3d 258 (Ohio App. 9th Dist., 2018). In 2016, a father of two minor children in Cuyahoga County, Ohio, filed a claim to determine custody of the children. At the pretrial, the father informed the magistrate he wanted to be named a legal custodian because he paid child support. The magistrate appointed a guardian ad litem, a third party that considers the best interests of the children, to work with the couple and come to a resolution. On the day of the the trial, the mother and father informed the court they had settled the matter. The mother and father signed an agreement that was approved by the guardian ad litem. The

agreement detailed that the children would live with the mother, subject to the father’s visitation rights as set out in the agreement. The agreement was incorporated into the magistrate’s decision, with the magistrate designating the mother as the legal custodian and residential parent. The father appealed the decision, asserting that because of a unilateral error on his part, where he thought he was signing a shared parenting agreement, the judgment should be overturned. Do you think the father has grounds to assert a unilateral mistake? What kind of evidence would the father need to successfully make his case? Source: IN RE JW, 2017 Ohio 8486 (2017).